IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Appeal From Order No. 388 of 2004

National Insurance Company Limited
Through its Divisional Manager
Divisional Office 5/222, Canal Road
Tikonia, Haldwani, District Nainital ... Appellant

Vs

1. Smt. Munesh W/o Late Satpal
2. Km. Kavita minor , D/o Late Satpal
3. Rajat, minor S/o Late Satpal
4. Arun, minor S/o Late Satpal
5. Ankush, minor S/o Late Satpal
   Respondents No. 2 to 5 are the minors through
   Their legal Guardian & mother Smt. Munesh
   All R/o Village Dariapur Dayalpur
   Post Office Hallu Majra
   Tehsil Roorkee, District Haridwar
6. Fayyaz Ahmad @ Aijaz S/o Mohammad Ahmad
   R/o Zabardastpur
   P.O. Ladora
   District Haridwar
7. Noor Hasan S/o Peer Mohammad
   R/o Ladora, P.O. Khas
   District Haridwar ... Respondents

Sri Bindesh Kumar Gupta, learned counsel for the appellant
Sri M.C. Pant, learned counsel for the respondents

Hon'ble B.C. Kandpal, J.

This appeal has been preferred by the appellant – National Insurance Company Ltd. against the judgment and award dated 07.07.2004 and decree dated 12.07.2004 passed by the M.A.C.T./IInd Fast Track Court/Addl. District Judge, Haridwar in M.A.C. Case No. 76 of 2003 Smt. Munesh & others Vs Fayyaz Ahmad & another.

2. Brief facts of the case are that on 09.06.2003, the deceased – Satpal was to going to Roshnabad from Bahadrabad. One truck bearing registration No. UA04A 7198 hit the deceased, resulting which Satpal sustained injuries. When the injured was taken to the hospital, he died in the

way. The truck was being driven by its driver in a very rash and negligent manner due to which the accident occurred. At the time of the accident the deceased – Satpal was aged about 28 years and was doing as a labourer. Therefore, the claimants filed a claim petition of Rs. 5,00,000/- as compensation before the Tribunal concerned.

3. The Insurance Company, owner of the vehicle in question and the driver of the vehicle contested the claim petition and filed their separate written statements. The driver of the vehicle in question has pleaded in his written statement that the accident was not caused due to rash and negligent driving of the driver. The driver and owner of the truck in question pleaded that at the time of the accident the truck was insured with National Insurance Company Ltd., therefore, the liability of compensation is on Insurance Company.

4. National Insurance Company Ltd. also filed its written statement. The Insurance Company admitted this fact that at the time of the accident the truck was insured with the Company. At the same time the Insurance Company has pleaded the amount of compensation claimed, is very high. The Insurance Company has further pleaded that the driver of the truck was not having the valid driving licence as well as the permit on the said route.

5. On the basis of the pleadings of the parties, the Tribunal concerned framed the relevant issues.

6. After hearing learned counsel for the parties and perusing the entire material on record, the Tribunal awarded a sum of Rs. 1,87,000/- to the claimants vide judgment and award dated 07.07.2004.

7. Heard Sri Bindesh Kumar Gupta, learned counsel for the appellant, Sri M.C. Pant, learned counsel for the respondents and perused the record.

8. The contention of the appellant is that the deceased was travelling in the offending truck as a gratuitous passenger. Hence, the Insurance Company is not liable to pay an amount of compensation awarded by the Tribunal.

9. I do not find any force in the argument advanced by the learned counsel for the appellant as the Tribunal has specifically framed the issues No. 3 and 5 in this regard and the finding of the Tribunal is also specific to this effect that the insurer did not adduce any evidence before the Tribunal in order to show that the deceased was travelling as a gratuitous passenger in the offending truck at the time of the accident.

10. It has also specifically come in the evidence before the Tribunal that the driver was produced as D.W.1 before the court below and he has specifically stated that the deceased was not travelling in the offending truck. The plea was raised by the Insurance Company with regard this fact that the deceased was travelling as a gratuitous passenger at the time of the accident. Therefore, it was the burden on the shoulder of the insurer to discharge the same but the insurer has not adduced any evidence in this regard before the Tribunal.

11. Learned counsel for the Insurance Company has also argued that the driver was not having the valid driving licence at the time of the accident.

12. I again do not find any force in this argument. The record shows that the driver was having the driving licence which was effective upto 26.12.2002. The driving licence was subsequently renewed w.e.f. 27.12.2003 to 26.12.2005.

13. The submission was also raised by the learned counsel for the appellant that at the time of the accident, the driving licence was not renewed. This submission advanced by learned counsel for the appellant is devoid of any merit, in view of catena of decisions of this point. It has neither been pleaded nor any evidence has been adduced in this regard by the Insurance Company that the driver at the time of the accident was disqualified from plying the vehicle in question. The Insurance Company in case, if has not adduced any evidence that the driver was disqualified for driving the vehicle in question at the time of the accident, it cannot be held that the offending truck in question was being driven by the person not having the valid driving licence with him.

14. With the aforesaid observations, I do not find any force in the appeal. The appeal lacks merit and is liable to be dismissed.

15. The impugned judgment and award dated 07.07.2004 and decree dated 12.07.2004 passed by the M.A.C.T./IInd Fast Track Court/Addl. District Judge, Haridwar in M.A.C. Case No. 76 of 2003 Smt. Munesh & others Vs Fayyaz Ahmad & another is hereby confirmed.

16. Accordingly, the appeal is dismissed. The stay order, if any stands vacated.

17. The amount deposited by the Insurance Company before the Tribunal concerned be remitted in favour of the claimants/respondents.

(B.C. Kandpal, J.)

01.12.2006
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